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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL IRBY,

Defendant and Appellant.

B290720

Los Angeles County
Super. Ct. No. LA076924

APPEAL from a judgment of the Superior Court of Los Angeles County, Susan M. Speer, Judge. Affirmed.

Miriam K. Billington, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant Michael Irby appeals from a judgment entered following a jury trial in which he was convicted of one count of assault with a deadly weapon in violation of Penal Code section 245, subdivision (a)(1).

Conforming to *People v. Wende* (1979) 25 Cal.3d 436, Irby's counsel filed an opening brief containing a statement of facts but raising no issues. Counsel asks this court to review the record independently and to determine whether any arguable issues exist on appeal. On November 15, 2018, we granted an order augmenting the record on appeal to include: (1) a report by Barry T. Hirsch, Ph.D, dated May 18, 2015; (2) a Penal Code section 1370 report dated August 26, 2015, considered by the trial court on October 9, 2015; (3) a Penal Code section 1370 report dated February 23, 2016, considered by the trial court on April 5, 2016; (4) a certification of mental competency by Nady Hanna, M.D., considered by the trial court on April 14, 2016, and (5) a psychological evaluation by Andrea Bernhard, Psy.D., which was admitted into evidence on May 4, 2018. We have reviewed the entire record and find no arguable issues exist. Irby has submitted a supplemental brief that is unintelligible and lacks discernible merit. We affirm.

I

On February 5, 2015, Irby was charged by information with one count of assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1)). The information alleged Irby had a 2006 conviction for assault with a deadly weapon (Super. Ct. L.A. County No. LA049770) that was a serious felony (§ 667, subd. (a)(1)) within the meaning of the “Three Strikes” law and a prior strike conviction (§§ 667, subds. (b)–(j), 1170.12). Irby pleaded not guilty and denied the special allegations.

On February 16, 2014, around 6:00 p.m., Tarvella Razi was with his two young children (ages three and four) withdrawing cash from a Wells Fargo ATM, at the intersection of Lankershim Boulevard and Weddington Street in North Hollywood. While using the ATM, Razi noticed a man across the street yelling at passing cars. Razi turned around and the man “was right in front of my face just standing there.” Razi was startled and said, “Whoa.” The man said, “Wa, wa, wa, wa.” The man “pulled out a large knife.” Razi testified the man held the knife “raised above my head” and “the blade was facing towards my face and towards my person.” Razi said, “He was advancing towards me and I was backing up. So I had my sons and I’ve my hands here, I’m blocking my sons. He’s advancing towards me.” Razi used his left hand to hit Irby’s “wrist to knock the knife out of his hand.” Razi did so “because I wanted to stop him from stabbing me. He was – there was nowhere for me to go at that moment, so I wanted to stop him from stabbing me or whatever he was doing with the knife or threatening me with the knife.” “[T]hat was the only way that I could defend myself at that point was to use this part of my hand in order to knock the knife out of his hand.” The knife fell out of Irby’s hand. “After the knife fell, it was like a

continuous motion. I blocked it, then I hit him twice, and he fell to the ground.” At that point, Irby “started to rummage in his jacket or into his clothes or in his pockets.” Razi pleaded with Irby, “Please don’t go into your pockets.” Irby “pulls out what appears to be a large can of pepper spray.” Razi said, “When he pulled out the pepper spray, I just went – I picked him up. I went towards him, I put my head down. I went towards him. I slammed him on the ground and I started hitting him in his side, just kept hitting him in his side trying to have him let loose of the pepper spray. [¶] My eyes were closed and he was spraying me in my eyes and mouth and I was just kept trying to hit him, seemed like forever at that point, so he would release the can of pepper spray or mace, whatever it is.” Police soon arrived.

Irby testified in his own defense at trial, “I was having a little manic episode. But when I got to the bank, it had passed.”

On April 9, 2015, the jury convicted Irby of one count of assault with a deadly weapon in violation of Penal Code section 245, subdivision (a)(1). Irby admitted he sustained the prior strike conviction in case No. LA049770.

Irby waived time and the trial court continued the sentencing to May 27, 2015. On May 27, 2015, criminal proceedings were suspended to allow for Irby’s mental competency to be evaluated. The trial court appointed Dr. Barry Hirsch to examine Irby. On June 25, 2015, after a competency hearing was held, the trial court found Irby was not mentally competent to stand trial under section 1368 and ordered him to Patton State Hospital. On August 19, 2015, Irby was admitted to Metropolitan State Hospital. On August 28, 2015, no progress report was received from Patton State Hospital. On September 10, 2015, the trial court ordered the director of Metropolitan

State Hospital to provide a report on Irby's progress. On October 9, 2015, the trial court got a report from Metropolitan State Hospital and ordered further treatment for Irby. On April 5, 2016, the court received another such report and issued the same order again.

On May 4, 2018, the trial court found that Irby's mental competency had been restored and reinstated the proceedings. The trial court sentenced Irby to an aggregate state prison term of 11 years. The trial court selected three years (the middle term) for assault with a deadly weapon, which it doubled under the Three Strikes law. The court imposed a consecutive five-year term for Irby's prior serious felony conviction (§§ 667, subd. (a)(1), 1192.7). The trial court awarded Irby 2627 days of custody credits (1089 days of actual custody, plus 1088 days for good time/good work, and 450 days spent at Patton State Hospital), and imposed various fines and fees.

II

We appointed appellate counsel to represent Irby. Appellate counsel filed a *Wende* brief that raised no issues. Counsel declared she reviewed the record. She wrote Irby explaining her evaluation of the record. Counsel further declared she advised Irby of his right under *Wende* to submit a supplemental brief within 30 days.

On January 29, 2019, we also wrote Irby, advising him of his right to file a supplemental brief. On February 4, 2019, Irby submitted a supplemental brief that is unintelligible. Irby filed two letters, on February 14, 2019 and February 21, 2019. All lack merit.

We have examined the entire record of the proceedings consisting of the clerk's transcript, augmented clerk's transcript,

and reporter's transcript, and are satisfied that appointed counsel fully complied with her responsibilities in assessing whether any colorable appellate issues exist. There are no arguable appellate issues. (*People v. Kelly* (2006) 40 Cal.4th 106; *Wende, supra*, 25 Cal.3d 436.)

DISPOSITION

The judgment is affirmed.

WILEY, J.

WE CONCUR:

BIGELOW, P. J.

STRATTON, J.